

1-1 By: Paxton S.B. No. 2021
1-2 (In the Senate - Filed March 9, 2023; March 21, 2023, read
1-3 first time and referred to Committee on State Affairs;
1-4 April 13, 2023, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 11, Nays 0; April 13, 2023,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>Hughes</u>	X		
1-10	<u>Paxton</u>	X		
1-11	<u>Bettencourt</u>	X		
1-12	<u>Birdwell</u>	X		
1-13	<u>LaMantia</u>	X		
1-14	<u>Menéndez</u>	X		
1-15	<u>Middleton</u>	X		
1-16	<u>Parker</u>	X		
1-17	<u>Perry</u>	X		
1-18	<u>Schwertner</u>	X		
1-19	<u>Zaffirini</u>	X		

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 2021 By: Hughes

1-21 A BILL TO BE ENTITLED
1-22 AN ACT

1-23 relating to requirements for certain Internet websites containing
1-24 sexual material harmful to minors; providing a civil penalty.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. The heading to Chapter 120, Business & Commerce
1-27 Code, is amended to read as follows:

1-28 CHAPTER 120. SOCIAL MEDIA PLATFORMS AND INTERNET WEBSITES

1-29 SECTION 2. Chapter 120, Business & Commerce Code, is
1-30 amended by adding Subchapter E to read as follows:

1-31 SUBCHAPTER E. SEXUAL MATERIAL HARMFUL TO MINORS

1-32 Sec. 120.201. DEFINITIONS. In this subchapter:

1-33 (1) "Commercial entity" includes a corporation,
1-34 limited liability company, partnership, limited partnership, sole
1-35 proprietorship, or other legally recognized business entity.

1-36 (2) "Distribute" means to issue, sell, give, provide,
1-37 deliver, transfer, transmute, circulate, or disseminate by any
1-38 means.

1-39 (3) "Minor" means an individual younger than 18 years
1-40 of age.

1-41 (4) "News-gathering organization" includes:

1-42 (A) an employee of a newspaper, news publication,
1-43 or news source, printed or on an online or mobile platform, of
1-44 current news and public interest, who is acting within the course
1-45 and scope of that employment and can provide documentation of that
1-46 employment with the newspaper, news publication, or news source;
1-47 and

1-48 (B) an employee of a radio broadcast station,
1-49 television broadcast station, cable television operator, or wire
1-50 service who is acting within the course and scope of that employment
1-51 and can provide documentation of that employment.

1-52 (5) "Publish" means to communicate or make information
1-53 available to another person or entity on a publicly available
1-54 Internet website.

1-55 (6) "Sexual material harmful to minors" includes any
1-56 material that:

1-57 (A) the average person, applying contemporary
1-58 community standards, would find, taking the material as a whole and
1-59 with respect to minors, is designed to appeal to or pander to the
1-60 prurient interest;

2-1 (B) in a manner patently offensive with respect
2-2 to minors, exploits, is devoted to, or principally consists of
2-3 descriptions of actual, simulated, or animated display or depiction
2-4 of:

2-5 (i) a person's pubic hair, anus, or genitals
2-6 or the nipple of the female breast;

2-7 (ii) touching, caressing, or fondling of
2-8 nipples, breasts, buttocks, anuses, or genitals; or

2-9 (iii) sexual intercourse, masturbation,
2-10 sodomy, bestiality, oral copulation, flagellation, excretory
2-11 functions, exhibitions, or any other sexual act; and

2-12 (C) taken as a whole, lacks serious literary,
2-13 artistic, political, or scientific value for minors.

2-14 (7) "Transactional data" means a sequence of
2-15 information that documents an exchange, agreement, or transfer
2-16 between an individual, commercial entity, or third party used for
2-17 the purpose of satisfying a request or event. The term includes
2-18 records from mortgage, education, and employment entities.

2-19 Sec. 120.202. PUBLICATION OF MATERIAL HARMFUL TO MINORS.

2-20 (a) A commercial entity that knowingly and intentionally publishes
2-21 or distributes material on an Internet website, including a social
2-22 media platform, more than one-third of which is sexual material
2-23 harmful to minors, shall use reasonable age verification methods as
2-24 described by Section 120.203 to verify that an individual
2-25 attempting to access the material is 18 years of age or older.

2-26 (b) A commercial entity that performs the age verification
2-27 required by Subsection (a) or a third party that performs the age
2-28 verification required by Subsection (a) may not retain any
2-29 identifying information of the individual after access has been
2-30 granted to the material.

2-31 (c) A commercial entity that knowingly and intentionally
2-32 publishes or distributes material on an Internet website that is
2-33 found to have violated this section is liable to the parent or
2-34 guardian of the minor for damages resulting from a minor's access to
2-35 the material, including court costs and reasonable attorney's fees
2-36 as ordered by the court.

2-37 (d) A commercial entity that knowingly and intentionally
2-38 publishes or distributes material on an Internet website or a third
2-39 party that performs the age verification required by Subsection (a)
2-40 that is found to have knowingly retained identifying information of
2-41 an individual after access has been granted to the individual is
2-42 liable to the individual for damages resulting from retaining the
2-43 identifying information, including court costs and reasonable
2-44 attorney's fees as ordered by the court.

2-45 Sec. 120.203. REASONABLE AGE VERIFICATION METHODS. (a) In
2-46 this section, "digital identification" means information stored on
2-47 a digital network that may be accessed by a commercial entity and
2-48 that serves as proof of the identity of an individual.

2-49 (b) A commercial entity that knowingly and intentionally
2-50 publishes or distributes material on an Internet website or a third
2-51 party that performs age verification under this subchapter shall
2-52 require an individual to:

2-53 (1) provide digital identification; or

2-54 (2) comply with a commercial age verification system
2-55 that verifies age using:

2-56 (A) government-issued identification; or

2-57 (B) a commercially reasonable method that relies
2-58 on public or private transactional data to verify the age of an
2-59 individual.

2-60 Sec. 120.204. SEXUAL MATERIALS HEALTH WARNINGS. A
2-61 commercial entity required to use reasonable age verification
2-62 methods under Section 120.202(a) shall:

2-63 (1) display the following notices on the landing page
2-64 of the Internet website and all advertisements for the Internet
2-65 website in 14-point font or larger:

2-66 "TEXAS HEALTH AND HUMAN SERVICES WARNING: Pornography
2-67 is potentially biologically addictive, is proven to harm human
2-68 brain development, desensitizes brain reward circuits, increases
2-69 conditioned responses, and weakens brain function."

3-1 "TEXAS HEALTH AND HUMAN SERVICES WARNING: Exposure to
3-2 this content is associated with low self-esteem and body image,
3-3 eating disorders, impaired brain development, and other emotional
3-4 and mental illnesses."

3-5 "TEXAS HEALTH AND HUMAN SERVICES WARNING: Pornography
3-6 increases the demand for prostitution, child exploitation, and
3-7 child pornography."; and

3-8 (2) display the following notice at the bottom of
3-9 every page of the Internet website in 14-point font or larger:

3-10 "U.S. SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION
3-11 HELPLINE:
3-12 1-800-662-HELP (4357)
3-13 THIS HELPLINE IS A FREE, CONFIDENTIAL INFORMATION SERVICE (IN
3-14 ENGLISH OR SPANISH) OPEN 24 HOURS PER DAY, FOR INDIVIDUALS AND
3-15 FAMILY MEMBERS FACING MENTAL HEALTH OR SUBSTANCE USE DISORDERS.
3-16 THE SERVICE PROVIDES REFERRAL TO LOCAL TREATMENT FACILITIES,
3-17 SUPPORT GROUPS, AND COMMUNITY-BASED ORGANIZATIONS."

3-18 Sec. 120.205. ENFORCEMENT BY ATTORNEY GENERAL; CIVIL
3-19 PENALTY. (a) A commercial entity who violates this subchapter is
3-20 liable to this state for a civil penalty in an amount not to exceed
3-21 \$30,000 for each violation.

3-22 (b) The attorney general may bring an action in the name of
3-23 the state to recover a civil penalty under this section. The
3-24 attorney general may recover attorney's fees and costs incurred in
3-25 bringing an action under this section.

3-26 (c) The action may be brought in a district court in:
3-27 (1) Travis County; or
3-28 (2) a county in which any part of the violation or
3-29 threatened violation occurs.

3-30 (d) The attorney general shall deposit a civil penalty
3-31 collected under this section in the state treasury to the credit of
3-32 the general revenue fund.

3-33 Sec. 120.206. CIVIL ACTION AGAINST COMMERCIAL ENTITY. (a)
3-34 A parent or guardian of a minor who accesses sexual material harmful
3-35 to minors due to the violation of this subchapter by a commercial
3-36 entity may bring a civil action against the commercial entity.

3-37 (b) A parent or guardian who brings an action under this
3-38 section shall provide written notice of the action to the attorney
3-39 general.

3-40 (c) Notwithstanding Sections 41.003 and 41.004, Civil
3-41 Practice and Remedies Code, a parent or guardian who prevails in an
3-42 action under this section is entitled to recover:
3-43 (1) damages in the amount of \$10,000;
3-44 (2) court costs; and
3-45 (3) attorney's fees.

3-46 (d) A court may certify an action brought against a
3-47 commercial entity under this section as a class action.

3-48 Sec. 120.207. OTHER ACTION BY ATTORNEY GENERAL. (a) In
3-49 addition to collecting the penalty under Section 120.205, the
3-50 attorney general may bring a civil action to enjoin a commercial
3-51 entity from further violating this subchapter.

3-52 (b) The attorney general may join an action for which the
3-53 attorney general receives notice under Section 120.206(b).

3-54 (c) The court shall permit the attorney general to join an
3-55 action in accordance with Subsection (b) not later than the 30th day
3-56 after the date the attorney general receives notice of the action.

3-57 (d) If the attorney general joins an action in accordance
3-58 with Subsection (b), the attorney general may seek the remedies
3-59 provided under Subsection (a) and Section 120.205.

3-60 Sec. 120.208. APPLICABILITY OF SUBCHAPTER. (a) This
3-61 subchapter does not apply to a bona fide news or public interest
3-62 broadcast, website video, report, or event and may not be construed
3-63 to affect the rights of a news-gathering organization.

3-64 (b) An Internet service provider, or its affiliates or
3-65 subsidiaries, a search engine, or a cloud service provider may not
3-66 be held to have violated this subchapter solely for providing
3-67 access or connection to or from a website or other information or
3-68 content on the Internet or on a facility, system, or network not
3-69 under that provider's control, including transmission,

4-1 downloading, intermediate storage, access software, or other
4-2 services to the extent the provider or search engine is not
4-3 responsible for the creation of the content that constitutes sexual
4-4 material harmful to minors.

4-5 SECTION 3. This Act takes effect September 1, 2023.

4-6

* * * * *